

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERT G. & BILLIE L.)	
DEMAROIS,)	
)	DOCKET NO.: PT-2000-15
Appellants,)	
)	
-vs-)	
)	FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on June 4, 2001 in the City of Polson, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The Appellant, Robert G. DeMarois, provided testimony in support of the appeal. The Department of Revenue (DOR), represented by Jackie Ladner and Larry Richards, appraisers with the Lake County Appraisal Office, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board requested additional evidence for clarification for the taxpayer regarding the Economic Condition Factor (ECF) from the DOR. The taxpayer was provided an opportunity to submit additional comments within a reasonable time upon receipt of this information. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and

matters presented to it by all parties, finds and concludes under jurisdiction of the Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM). The duty of this Board is to determine the market value for the subject property based on the preponderance of the evidence. The taxpayer did not present credible evidence to support a value of \$103,555. In addition, the DOR's value determination for the improvements will be modified by removing the "Economic Condition Factor".

STATEMENT OF THE ISSUE

The taxpayer contends that the DOR has inequitably appraised the improvements on the subject property resulting in a lower percentage of tax reduction in comparison to the reduction in taxes on similar improvements on adjacent property.

FACTUAL BACKGROUND

1. The subject property is described as improvements only located on 2.38 acres of lakefront property on SkiDoo Bay, Flathead Lake, Finley Point Estates, Section 19, Township 23, Range 19 West, Lake County, Montana. (Assessor # - 2384).
2. For tax year 2000, the DOR valued the subject improvements at \$164,740.
3. Mr. DeMarois filed a timely appeal with the Lake County Tax Appeal Board on May 1, 2000 requesting a market value of \$103,555 for the improvements, stating:

My home and buildings are over 20 years old. Montana Dept. of Revenue gave no consideration for depreciation and only gave a \$350.00 reduction in tax. The property

to the north adjoining my property received over \$1300.00 reduction and the owners spent over \$50000.00 for improvements. I know because I used to own the property which I sold in Jan. 1999. I feel the State tax appraiser has been unfair in his appraisal. I will appreciate your consideration for a fair reduction.

4. In its December 4, 2000 decision, the Lake County Tax Appeal Board denied the appeal, stating:

After deliberation on this property and adjacent properties, the Board decided the value, as determined by the Depart. of Revenue, was in accordance with market value.

5. Mr. DeMarois filed a timely appeal of the Lake County Tax Appeal Board decision to this Board on January 3, 2001, stating:

As a result of the Lake County appraisal, my taxes for 1999 reduced 350.00. My neighbor to the immediate north reduced \$1300.00. We both have approximately the same amount of land and lake frontage. My buildings are as old as my neighbors and both over 20 years old. My neighbor spent at least \$50,000.00 in improvements. I have spent \$2600.00 to enlarge my boathouse. I request the same percentage of reduction as my neighbor. His was about %50%. If I had the same percentage reduction my tax would reduce about \$1700.00 instead of \$350.00. Attached documents for your review.

TAXPAYER'S CONTENTIONS

Mr. DeMarois testified that he had not contested or questioned the taxes on the property until he discovered the differences between his and his neighbor's taxes. His neighbor's taxes decreased by 50%, while his decreased 11%. It is his opinion that the percentages ought to be consistent for all property owners in Lake County.

In Mr. DeMarois' opinion, the DOR's appraisal did not take

into account any depreciation for his structures, which are in excess of 20 years in age.

In his opinion, the market value and how the taxes are assessed were not fully understood, referring to the time lag in the appraisal cycle, phase-in, and land cap. He was basing his appeal on the 1996 appraisal cycle that established a value of \$103,555 for improvements.

Mr. DeMarois indicated that his boathouse had been enlarged since the last appraisal cycle, and the other buildings were the same, except for general maintenance. He has seen an approximate 50% increase in taxes. While acknowledging an increase in market value on his property, his belief is that he is experiencing inequity in comparison to the neighbor's assessment and reduced taxes. He contended that his neighbor had spent over \$50,000 in improvements after purchasing the property in 1999, and had a 50% reduction in taxes.

DOR CONTENTIONS

DOR Exhibit A, entitled *Taxable Values and Taxes on DeMarois Property*, shows DOR assigned values and taxes for years 1998, 1999 and 2000. Ms. Ladner indicated that new or additional taxable improvements on the subject property were discovered as a result of a new construction permit inspection in February 1999. Therefore, updating the taxable improvements occurred after the 1996 appraisal cycle went into effect in 1997.

DOR Exhibit B is titled *Taxable Values on Adjacent Property*.

The exhibit refers to the adjacent property sold by the taxpayer in 1999.

DOR Exhibit C is titled *Comparison with Adjacent Property* and describes the features of the subject and adjacent property (exhibit B), i.e., age of residence, value of improvements, shoreline frontage, acreage, and the land cap adjustment.

DOR Exhibit D, consists of four pages:
Page (1) a drawing of the footprint of the improvement (house);
Pages (2) & (3) copies of the property record card;
Page (4) a table titled *Part 4: Replacement Cost* for 1996.

Ms. Ladner described the improvements and dates (for the appraisal cycle) as shown on the property record card including the style of house (ranch), heating type (electric), floor area (1,863 square feet), bedrooms (3), baths (2), size of deck and carport, boathouse, boat dock, paving, shed, and retaining walls.

DOR Exhibit E is a copy of the property record card submitted to indicate that a building permit was issued in 1999, prompting the DOR to review the site for the purposes of updating the appraisal.

DOR Exhibit F is titled "*Over-Appraising*" of *DeMarois Property*. An explanation of the information was a closing statement by DOR and shows that Mr. DeMarois sold the adjacent property in 1999 for \$410,000. The DOR appraised value was \$238,870 on the adjacent property.

DOR stated that the reason the subject property's improvement

value exceeds the adjacent property is due to the fact the improvement is superior to the adjacent property with respect to age, condition, size, etc.

The DOR indicated that Mr. DeMarois sold the adjacent property for \$410,000 in 1999.

The DOR's post-hearing submission states in pertinent part:

The cost base schedules will reflect January 1, 1996, cost information. 42.18.109 and 42.18.121. The Department of Revenue developed cost tables by using Marshall-Swift, Means, and Boeckh's Valuation Manuals, trended by actual regional construction costs to January 1, 1996.

In other words, for this appraisal cycle, residential and commercial properties were appraised at 100% of a January 1, 1996 market value.

Economic Condition Factor

Where comparable sales were not available to value a parcel, the cost approach was used to establish market value. The value for the land was determined from the CALP (Computer Assisted Land Pricing) tables, which were determined from the cost tables. However, the resulting value did not necessarily represent true market value. "The final step in the cost approach is ensuring that estimated values are consistent with the market. This is particularly important because the cost approach separately estimates land and building values and uses replacement cost, which reflects only the supply side of the market." "Market adjustment factors are often requested to adjust values obtained from the cost approach to the market." Property Appraisal and Assessment Administration, IAAO pg 360 and 311.

The value resulting from the cost approach is compared to the sales base of the given neighborhood group and percentage difference between the two is termed the ECF. The ECF is then applied to the replacement cost new less depreciation to all property in the area. "...market adjustment factors provide an efficient and effective method of maintaining current market values and uniformity among strata." Property Appraisal and Assessment Administration IAAO pg 203. "Market adjustment factors, reflecting supply and demand preferences, are often required to adjust values obtained from the cost approach to the market. These adjustments should be applied by type of property and area and are based on sales ratio studies or other market analysis." Property Assessment Valuation, IAAO pg 303.

DETERMINATION OF ECONOMIC CONDITION FACTOR

IAAO refers to these adjustment as "market adjustment factors" while the Department of Revenue refers to these as Economic Condition Factors (ECFs).

When a market model for a particular area has been developed and preliminary market estimates for the subject properties have been determined, the ECF can be developed. The formula for calculating ECF is as follows:

$$ECF = 1 + \frac{(\text{Median Ratio of Market Value to Cost Value}) - 1}{1 - (\text{Total Land Value} / \text{Total Cost Value})}$$

The Total Land Value for all the subject property is determined by analyzing land sales in the area and establishing CALP (Computer Assisted Land Pricing) tables by which all the land in the area is then valued. The Total Cost Value is established by use of the cost tables mentioned earlier in this discussion. This calculation establishes a relationship between land value and building value.

Neighborhood 300, in which the property under appeal is located, has an ECF of 117%. Data from the analysis of sales and cost values resulted in the following:

Medial ratio = 1.0656 (Market Value/Cost Value)
 Total land = \$344,496,435*
 Total cost = \$567,617,105*
 *Variables 037 and 039 of the "Statistical Analysis of Variables Report produced by the MAS 424 program.

$$ECF = 1 + \frac{1.065 - 1}{1 - .607} \quad \begin{matrix} \text{(Market Value/Cost Value)} \\ \text{(Total land/Total Cost)} \end{matrix}$$

$$ECF = 1 + .065 / .393 = 1.165 = 117\% \text{ (rounded to the nearest percent)}$$

The first division (Market/Cost) established a relationship between the total cost value of the property and total market value. The second division (Land/Cost) establishes a relationship between land and building values. The third division (Market/Cost)/(Land/Cost) established a relationship between the market value of the improvements and the cost approach to value of the improvements by removing the land influence.

117% represents the difference between the value arrived at by the application of the cost approach to value to the improvements and value indicated by the actual sale of property in this neighborhood. It is therefore, the factor necessary to align cost value of the improvements with market value of improvements.

APPLICATION OF ECF

After the ECF has been determined, it is applied across the board to all properties in that area. This creates equity, when the cost approach is required to value a parcel in place of the market approach, when comparable sales do not exist. This is much the same procedure by which the Marshall-Swift manual applies an adjustment to all properties in an area, regardless of age, size, quality of

construction, etc. "Local multipliers reflect local cost conditions and are designed to adjust the basic costs to each locality." Marshall-Swift/Marshall Valuation Service, Cost Multipliers, sec 99 pg 1. It is assumed that the same cost or market factors affect all property in that area.

This discussion of ECF demonstrates the validity of the application of this factor to the cost value of the properties appraised by the Montana Department of Revenue for tax purposes.

BOARD DISCUSSION

Mr. DeMarois' argument stems from the amount of real estate taxes being paid by the adjacent property owner. He testified that the neighboring property tax bill is significantly less, while both properties have a somewhat similar amount of lake frontage.

There are two separate issues that have affected the value of the property(s) that the Board will address.

The first issue is has to do with ***§15-7-111 MCA. Periodic revaluation of certain taxable property. (4) & (5) and ARM 42.20.518 Land cap eligibility and application*** (Hereinafter "land cap"). The "land cap" is a result of 1999 legislation. These portions of the statute and administrative rule address how the DOR shall value qualifying land.

This Board's jurisdiction begins and ends with the **market value** of the property under appeal. The Court cited in ***Blair v. Potter, 132 Mont. 176, 315 P.2d 177.*** Tax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property or a particular improvement. The Court also cited, *Assessment formulations are within the expertise of the Board. DeVoe, 233 Mont. At 196, 759 P.2d at 995.*

While the value of the land has not been contested in the immediate appeal, it does affect the amount of real estate taxes, which is a concern, raised by the taxpayer. Referencing DOR exhibits A and B along with the provisions of the "land cap", suggest the following:

	<u>Exhibit A</u>	<u>Exhibit B</u>
Property	Subject	Adjacent
Improvement Value	\$164,740	\$53,160
Land Cap	X 75%	X 75%
Land Value	\$123,555	\$39,870

The DOR testified that the adjacent property's land value of \$39,870 is below the statewide average pursuant to the "land cap". The DOR testified that 75% of the statewide average is \$51,825, as illustrated of exhibit B.

§15-8-111 MCA. Assessment - market value standard - exceptions (1) All taxable property must be assessed at 100% of its market value ***except as otherwise provided*** (emphasis supplied). The land cap permits the DOR to value the subject property for tax purposes at less than market value. The taxpayer did not dispute that the value of \$123,555 is less than actual market value.

Prior to the land cap the DOR established land values for the subject and adjacent property at:

Property	Subject	Adjacent
Land Value	\$208,160	\$189,020
Total Frontage (FF)	188 FF	165 FF
Price Per Front Foot	\$1,107 FF	\$1,146 FF

Pursuant to the "land cap", the DOR established land values for the subject and adjacent property at:

Property	Subject	Adjacent
Land Value	\$123,555	\$51,825

Total Frontage (FF)	188 FF	165 FF
Price Per Front Foot	\$657 FF	\$314 FF

Pursuant to the "land cap", the land value is dependent on the market value of the improvements. It is clear to this Board that the DOR has consistently valued the subject property pursuant to ***§15-7-111 MCA (4) & (5)*** and ***ARM 42.20.518***.

Based on the aforementioned, the taxes would be less on the adjacent property due to the fact an improvement of lesser value is situated on the property.

The second reason for the taxes being less on the adjacent property is that the DOR modified the taxpayer's improvement value from \$136,540 to \$164,740. The change in value, as testified by the DOR, was based on an on-site review of the subject property pursuant to a building permit. Pursuant to ***§15-7-111 MCA Periodic revaluation of certain taxable property,***

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class. (emphasis added)

Ms. Ladner testified that, upon inspection of the property, it was discovered that existing property had never been appraised by the DOR. She indicated that the improvements that had not been appraised were added to the DOR's appraisal at that time. Pursuant to ***§15-8-601 MCA Assessment revision - conference for review***.

(1)(a) ...whenever the department discovers that any taxable property of any person has in any year escaped assessment,

been erroneously assessed, or omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation.. (emphasis supplied)

Based on the aforementioned, the DOR was acting in accordance with statute when modifying the appraisal of the subject property. This alteration of the taxpayer's appraised value is a second indication of why the taxes would not decline at the same rate as the adjacent property owners, especially if no alterations to the adjacent property's improvements were made during the same time frame.

The second issue is the market value of the taxpayer's improvements. The taxpayer requested this Board consider a value of \$103,555. Mr. DeMarois indicated that this was the value for the improvements during the prior appraisal cycle. It is true, as a general rule, that the appraisal of the DOR is presumed to be correct and that the taxpayer must overcome this presumption. **Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967).** Mr. DeMarois presented no sustaining evidence or testimony to suggest that \$103,555 represents market value for the improvements for the current appraisal cycle.

The DOR should, however, bear a certain burden of providing documented evidence to support its assessed values. **Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347,**

428 P.2d 3,(1967).

The DOR's market value of \$164,470 was established by the cost approach to value. A summary of the property record card, (exhibit D) along with the DOR's testimony suggest the following:

<u>Dwelling</u>	
Replacement Cost New (RCN)	\$131,820
Percent Good (Depreciation - 14%)	X 86%
Economic Condition Factor (ECF)	X 117%
Replacement Cost New Less Depreciation (RCNLD)	\$132,640
Plus Depreciated Value of Out Buildings & Yard Improvements (OB&Y)	
Boat House (BB1)	\$ 3,340
Boat Dock (BD1)	\$ 8,820
Garage (RG3)	\$ 12,330
Asphalt Paving (PA1)	\$ 4,400
Shed (RS1)	\$ 1,490
Masonry Retaining Wall (RF6)	\$ 1,720
Total Improvement Value	\$164,740

Mr. DeMarois raised the concern that the DOR's appraisal is not considering a loss in value due to depreciation. While the DOR has applied a depreciation factor of 14% as noted above, the DOR has also applied or modified the value by an economic condition factor (ECF) of 117%. This in essence has absorbed any adjustment for physical depreciation. *The Montana Appraisal Manual*, 47-2, 11/01/96, defines "Economic Condition Factor" as:

The Economic condition factor is a component of depreciation or market adjustment that is usually applied after normal depreciation. It is normally 1.00 (100%) for the majority of properties where the cost index has been properly established and the depreciation schedules have been adequately calibrated.

It has a role in representing the effect of the economic climate on unique properties in a boom or bust economy. It can affect individual properties, or it can affect a whole class of properties. In a boom economy, market demand can force market prices above actual construction costs, with both new houses and used houses selling well in excess of stabilized construction cost. (emphasis supplied)

The Board requested the DOR submit additional documentation supporting the 117% ECF in a post-hearing submission.

In **Albright v. State of Montana, 281 Mont. 196, 933 P2d 815 (1997)**, the Supreme Court upheld the use of ECF's.

The use of ECF's is a recognized and accepted practice by fee appraisers. The ECF's used here are an integral component of CAMAS; are applied uniformly in the localized area; and appropriately take into consideration and adjust cost approach appraisals on individual parcels of property for current local economic and market conditions. Absent the integration of such economic and market influences, the results of the new appraisal produced by the cost approach would be skewed. (emphasis supplied).

The Board does not dispute the suitability of an "Economic Condition Factor" or "Market Rate Adjustment". What the Board requested from the DOR is **support for the 117% ECF**. The DOR did present the numbers used to calculate the 117% ECF. The Board does not dispute the calculations, but it must be noted that there is **no support** for the numbers used by the DOR to arrive at the 117% ECF. The DOR's post-hearing submission stated:

...This is much the same procedure by which the Marshall-Swift manual applies an adjustment to all properties in an area, regardless of age, size, quality of construction, etc. "Local multipliers reflect local cost conditions and are designed to adjust the basic costs to each locality." Marshall-Swift/Marshall Valuation Service, Cost Multipliers, sec 99 pg 1. It is assumed that the same cost or market factors affect all property in that area. (emphasis supplied)

The DOR referenced page 1 of section 99, of the Marshall Valuation Service. If in fact Marshall Valuation Service's local cost multiplier supports the DOR's 117% ECF, the DOR should have included this with the post-hearing submission. The Board must weigh the evidence based on the preponderance of the evidence, and based on what is contained in the record. It is the Board's

opinion there is insufficient evidence to support an ECF of any indication greater than 1.00 or 100%.

This administrative body is the finder of fact, and therefore, must consider all evidence and testimony properly put before it. In **Dept. of Revenue v. Countryside Village, 205 Mont. 51, 64-65 (1983)**, the Court said, The statutory procedures for the determination of tax protests must be followed, and in this case they require that STAB proceed to take evidence with respect to the individual protestors to determine if their individual properties have been overvalued in accordance with the criteria which we adopted from **Maxwell v. Shivers (1965), 257 Iowa 575, 133 N.W.2d 709, 711; Department of Revenue v. State Tax Appeal Board, 613 P.2d at 695.** Based on that evidence, in protests over which STAB now has jurisdiction, it may affirm, modify or reverse the decision of the County Tax Appeal Boards. (emphasis added).

This Board does not have access to the DOR Computer Assisted Mass Appraisal System (CAMAS), therefore, the DOR shall make the changes pursuant to the following order.

CONCLUSIONS OF LAW

1. **§15-2-301, MCA**, The State Tax Appeal Board has jurisdiction over this matter.
2. **§15-8-111, MCA**, Assessment - market value standard - exceptions,
 - (1) All taxable property must be assessed at 100% of its market

value except as otherwise provided.

3. **§15-2-301, MCA**, Appeal of county tax appeal board decisions,
(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. **Patterson v. Department of Revenue, 171 Mont. 168, 557 P. 2d 798 (1976)**: *When the taxpayer's property is appraised at market value he cannot secure a reduction of his assessment even if he is able to show that another taxpayer's property is under appraised.*
5. **§15-2-301, MCA**, Appeal of county tax appeal board decisions, (4)
In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence of rules of discovery and may affirm, reverse, or modify any decision.
6. **§15-2-301 MCA**, Appeal of county tax appeal board decisions,
(4)...*The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.*
7. **§15-7-111 MCA**. Periodic revaluation of certain taxable property.
(4) & (5).
8. **ARM 42.20.518** Land cap eligibility and application.
9. **Blair v. Potter, 132 Mont. 176, 315 P.2d 177.**

10. *§15-7-111 MCA* Periodic revaluation of certain taxable property.

11. *Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967).*

12. *Dept. of Revenue v. Countryside Village, 205 Mont. 51, 64-65 (1983)*

13. *Maxwell v. Shivers (1965), 257 Iowa 575, 133 N.W.2d 709, 711;*

14. *Department of Revenue v. State Tax Appeal Board, 613 P.2d at 695.*

15. The appeal of the taxpayer is hereby granted in part and denied in part. The decision of the Lake County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the local Department of Revenue office at a 2000 tax year improvement value reflective of an ECF factor of 100%. Despite the fact that the land value was not appealed, the

DOR shall adjust the value in accordance to ***§15-7-111 MCA. Periodic revaluation of certain taxable property. (4) & (5) and ARM 42.20.518 Land cap eligibility and application.*** The DOR shall make the changes in value pursuant to this order and notify the taxpayer in writing signifying those changes within ten days upon receipt of this decision.

Dated this 20th day of June, 2001.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

LARRY L. BROWN, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of June, 2001, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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